

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

JUL 19 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

 In the Matter of)
)
 C.F. Communications Corp., et al.)
)
 Complainants,)
)
 v.)
)
 Century Telephone of Wisconsin,)
 Inc., et al.)
)
 Defendants)

EB Docket No. 01-99

File Nos. E-93-43, E-93-44,
E-93-45

To: **Arthur I. Steinberg**
Administrative Law Judge

**MOTION OPPOSING THE TAKING OF DEPOSITIONS OR, IN
 THE ALTERNATIVE, MOTION TO LIMIT DEPOSITIONS AND
 MOTION OBJECTING TO THE SUBSTANCE OF DEPOSITIONS
REQUESTED BY COMPLAINANT ASCOM COMMUNICATIONS, INC.**

Carolina Telephone and Telegraph Company, in File No. E-93-43, United Telephone Company of Pennsylvania, in File No. E-93-44, and United Telephone Company of Florida in File No. E-93-45, ("Defendants") by their attorneys and pursuant to Sections 1.315 and 1.319 of the Commission's Rules, hereby oppose the Notice of Deposition filed by Complainant on July 12, 2001, and ask that the Notice be quashed. In the alternative, Defendants ask that the scope of the deposition be limited as discussed herein.

While discovery allows for a broad search of the facts, Complainant's Topics of Inquiry as specified in the Notice are unreasonably cumulative, duplicative, unduly

No. of Copies rec'd 076
 List A B C D E

burdensome and not relevant. As shown herein, most of Complainant's Topics of Inquiry are substantially the same or similar to Complainant's First Set of Interrogatories, First Document Production Request and Notice of Deposition dated July 6, 2001. Defendants have already properly answered or objected to those requests. Complainant's multiple filings, asking again and again for the same information, will not yield any new answers from Defendants and appear designed only to harass Defendants and waste their resources.

With respect to the Interrogatories and Document Requests already answered, it is unreasonably duplicative and a waste of resources to require Defendants to produce officers or employees for deposition to be asked the same questions already answered. With respect to the Interrogatories, Document Requests and Topics of Inquiry to which Defendants have raised objections, it is premature, duplicative and a waste of resources to proceed with depositions until there is a final resolution of the objections. If the Defendants' objections are not challenged or if they are upheld by the Administrative Law Judge, a deposition on the same issues would not produce any facts or evidence useful to the proceedings and, therefore, the burden or expense of the proposed discovery outweighs its likely benefit. Even if Defendants are ultimately required to answer certain Interrogatories, Document Requests and Topics of Inquiry to which they objected, this process should be concluded before it can be known whether there is any additional need for these depositions.

The taking of depositions in this case is extremely burdensome to Defendants because the potential deponents are employed in Kansas and other states not in the Washington, DC metropolitan area. Thus, Defendants would incur the cost of making the

deponents available in Washington, DC, as well as the cost of lost productivity for missed workdays. In addition, Complainant's have now filed two separate notices of depositions asking for substantially the same information, with the depositions scheduled for two separate, non-consecutive days. Thus, Defendants would be required to incur the cost of maintaining the potential deponents for at least four days in Washington, DC for a two-day deposition.¹ This also appears to be designed to harass the Defendants.

Moreover, the Topics of Inquiry could effectively be addressed in interrogatories and, in fact, Complainant has already submitted interrogatories on many of the Inquiries. As recognized by the Commission, depositions are a more costly and burdensome discovery method than interrogatories. Although the Commission's rules allow for depositions and written interrogatories, the Administrative Law Judge has wide discretion to limit or restrict discovery. In this case, where the Topics of Inquiry have previously been asked through written interrogatories and document requests, or are subject to a valid objection, this discretion should be used to prevent abuse and the unnecessary expenditure of resources. Accordingly, Defendants request that the Notice of Deposition be quashed.

In the alternative, Defendants request that the Notice of Deposition be limited to only those areas that are the subject of this dispute and to which an objection has not been sustained. In this regard, Defendants generally object to the Inquiries to the extent that they ask for information concerning end user common line (EUCL) charges imposed by entities other than the named Defendants on entities other than the named Complainant, Ascom Communications, Inc., and to the extent that they ask for information on telephone lines other than pay telephone lines. Ascom Communications, Inc. filed

¹ Complainant requests depositions on July 30 and August 2, 2001.

complaints against Carolina Telephone and Telegraph, United Telephone Company of Pennsylvania and United Telephone Company of Florida in connection with charges assessed on the provision of pay telephone service. Complainant's broadly worded Topics of Inquiry and definitions require Defendants to be prepared to answer questions concerning service provided by companies other than the named Defendants and to payphone providers other than Ascom Communications, Inc. Defendants also object to the Inquiries to the extent that they ask for information after Complainant sold its payphones, "in or about November 1993."² Accordingly, all information outside of these parameters is not relevant to these cases and the determination of Complainant's damages, and is not reasonably calculated to lead to the discovery of admissible evidence.

Defendants also object to the Inquiries to the extent that they ask for information back to 1987 as barred by the statute of limitations. Ascom has argued that its damages prior to January 11, 1991, are not barred by the statute of limitations because it filed informal complaints against the Defendants in 1990 and, because of an intervening bankruptcy proceeding, it was not required to file its formal complaint within six months of the Defendants' answers to the informal complaints. In the Hearing Designation Order (HDO), the Common Carrier Bureau (CCB) found that it could not make a decision on the merits of Ascom's contention without additional information provided by Ascom. Complainant has presented no evidence to support its claim. Until Ascom provides such evidence and the Administrative Law Judge finds in favor of Ascom's position, it is

² Complainant has admitted that it sold the payphones associated with these disputes "in or about November 1993" in its response to question 2 of the Defendants' First Sets of Interrogatories.

premature to require Defendants to go through the burdensome process of ascertaining the existence and content of the extremely old documents and information requested.

In addition, there is no need for Defendants to incur the cost and burden of producing or identifying the old billing records because Complainant has stated that it already has these records. In its formal complaint filings, Complainant attached copies of its informal complaints filed in 1990, which stated that Complainant had telephone bills from the Defendants which, at a minimum, show the amounts billed by the Defendants for the period covered by the informal complaints. Thus, in the informal complaints, Complainant alleged estimated total damages in the amount of \$4,391.40 for Carolina Telephone and Telegraph Company, \$294.00 for United Telephone Company of Pennsylvania, and \$5,760.00 for United Telephone Company of Florida. In each informal complaint, Complainant also represented that it attached bills showing that over the last 24 months it had been billed EUCL charges in these amounts by the Defendants.³ These attachments, however, apparently were not included in the formal complaint filings.

In any event, even if Complainant's position were upheld, the period of the dispute would be limited to two years before the informal complaints were filed. Complainant has alleged that the informal complaints were filed on August 5, 1990, against United Telephone Company of Pennsylvania and July 20, 1990, against Carolina Telephone Company and United Telephone Company of Florida. Although Defendants dispute these allegations, even assuming the truth of Complainant's position, any damages that accrued before August 5, 1988 against United Telephone Company of

Pennsylvania and before July 20, 1988 against Carolina Telephone Company and United Telephone Company of Florida are barred by the statute of limitations.

The CCB has rejected Complainant's only possible argument to extend the statute of limitations period to before 1988, namely, Complainant's argument that a 1989 Petition for Declaratory Ruling filed by the American Public Communications Council (APCC) should be considered a section 208 complaint that would enable Complainant to recover damages for the two-year period prior to the filing of that 1989 petition.⁴

Accordingly, Complainant's request for documents and information from the period 1987 through August 5, 1988 against United Telephone Company of Pennsylvania and through July 20, 1988 against Carolina Telephone Company and United Telephone Company of Florida must be rejected as beyond the statute of limitations.

As for specific objections, Defendants object to the Topics of Inquiry as specified below.⁵

1. Defendants object to Inquiries 1, 2, and 3 and all other inquiries to the extent that they ask for information from the period April 16, 1997 to the present. The Complainant has already stated in response to Defendants' First Set of Interrogatories 4(d) that it only requests damages through and including April 16, 1997. In addition, as of this date, the Commission required the imposition of EUCL charges on all payphone lines. Accordingly, any information concerning the period after April 16, 1997 is not relevant to this case and is not likely to lead to the discovery of relevant admissible evidence.

³ A copy of the Complainant's informal complaints is attached.

⁴ Hearing Designation Order at ¶11.

2. Defendants object to Inquiry 4, which asks for the identification of payphones for which Defendants have charged fees or tariffed as public or semi-public, as beyond the scope of this proceeding. The CCB designated for hearing the issue of the number of payphones each Complainant owned and the amount of EUCL paid for the public payphones, as defined by the CCB. Accordingly, payphones owned by Defendants and the Defendants tariffing of payphones as public or semi-public would not provide or lead to the discovery of relevant admissible evidence, nor would it be relevant to the outcome of this proceeding.
3. Defendants object to Inquiry 5, which asks for determinations made by Defendants as to whether the type or nature of the business where a particular payphone is located affects the classification of that payphone as “public” or “semi-public.” Defendant objects to this Inquiry for the same reasons raised in response to Complainant’s First Interrogatory 17 and Topic of Inquiry 4 in the July 6, 2001 Notice of Deposition.
4. Defendants object to Inquiry 6, which asks for any classifications by Defendants of payphones other than public and semi-public. Defendants object to this Inquiry as beyond the scope of the issues designated for hearing. The CCB designated for hearing the issue of the number of payphones each Complainant owned and the amount of EUCL paid for the “public” payphones as defined by the CCB. Accordingly, any classification by Defendants of

⁵ Defendants’ responses to the Complainant’s First Interrogatories and First Document Request, filed on July 6, 2001, and to the July 6, 2001, Notice of Deposition, filed on July 19, 2001, are incorporated herein by reference.

payphones would not provide or lead to the discovery of relevant admissible evidence, nor would it be relevant to the outcome of this proceeding.

5. Defendants object to Inquiry 7, which asks for Defendants' credit policies.

Defendants object to this Inquiry as beyond the scope of the issues designated for hearing. The CCB designated for hearing the issue of the amount of EUCL charges paid by Complainant for the public payphones identified. The requested information is not relevant to this issue.

6. Defendants object to Inquiry 8, which asks for Defendants' policies regarding the payment of deposits. The CCB designated for hearing the issue of the amount of EUCL charges paid by Complainant for the public payphones identified. The requested information is not relevant to this issue.

7. Defendants object to Inquiry 9, which asks for Defendants' policies regarding the tariffing and classifying payphones as "public" or "semi-public." Defendants repeat their objection to Topic of Inquiry 3 in the July 6, 2001, Notice of Deposition, that this Inquiry is beyond the scope of the issues designated for hearing.

8. Defendants object to Inquiry 10, which asks for Defendants' training records for service representatives relating to the classification of payphones as "public" or "semi-public" and the billing or payment of services. Defendants repeat their objections to Topic of Inquiry 3, 5, and 7 in the July 6, 2001, Notice of Deposition, that this Inquiry is beyond the scope of the issues designated for hearing.

9. Defendants object to Inquiry 11, which asks for Defendants' business practices and policies regarding non-payment of telephone bills and EUCL charges. Defendants repeat their objections to Topic of Inquiry 7 in the July 6, 2001, Notice of Deposition, that this Inquiry is beyond the scope of the issues designated for hearing.
10. Defendants object to Inquiry 12, which asks for the identification of any occasions when Complainant placed any amounts billed for EUCL charges in escrow. Defendants object because they have already answered in response to Complainant's First Interrogatory 34 in case E-93-43 and 36 in cases E-93-44 and E-93-45, Document Request 24, and Topic of Inquiry 8 in the July 6, 2001, Notice of Deposition, that, to the best of their knowledge, they have not authorized Complainant to place any amounts billed for EUCL charges in escrow.
11. Defendants object to Inquiry 13, which asks for the identification of occasions when Defendants classified payphones as "public" payphones in response to a request of the owner or lessor of the property. Defendant objects to this request for the same reasons as its objections to Topic of Inquiry 4 in the July 6, 2001, Notice of Deposition. Namely, The CCB designated for hearing the issue of the amount of EUCL Complainants paid for the "public payphones" that they owned, as defined by the CCB. Accordingly, any classification or criteria used by Defendants to classify payphones as "public" would not provide or lead to the discovery of relevant admissible evidence, nor would it be relevant to the outcome of this proceeding.

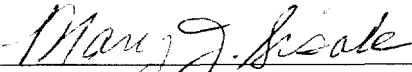
12. Defendants object to Inquiry 14, which asks for information concerning the scope and extent of any search conducted by Defendants for documents responsive to Complainant's Second Sets of Requests for Production of Documents and Second Sets of Interrogatories. Defendants have not yet received Complainant's Second Set of Request for Production of Documents and Second Set of Interrogatories and, therefore, Defendants object to this Inquiry in its entirety as an abuse of the procedural process. The timing of Complainant's second interrogatories and document requests was entirely in the hands of Complainant. If Complainant wanted to request depositions on the questions contained therein, it should have filed the second interrogatories and document requests earlier. By deliberately filing the deposition request before the second interrogatories and document request, Complainant attempts to either intentionally, or carelessly, deprive Defendants of their right to substantively oppose the taking of depositions on the questions contained therein. Complainant should not be allowed to game the process in this manner and, therefore, this Inquiry should be quashed.

Finally, Defendants object to the Notice directing Defendants to appear at the offices of Complainant's attorney on August 3, 2001. Defendants request that Complainant be ordered to conduct the depositions at Defendants office at 401 9th Street, NW, Suite 400, Washington, DC 20004, on a day mutually agreed to by the parties, but in no event different from the day designated for any other depositions.

Respectfully submitted,

**Carolina Telephone and Telegraph Company,
United Telephone Company of Pennsylvania,
United Telephone Company of Florida**

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, DC 20037

By: 
Benjamin H. Dickens, Jr.
Robert M. Jackson
Mary J. Sisak

Tel: (202) 659-0830

Dated: July 19, 2001

Their Attorneys



U.S. COMMUNICATIONS OF WESTCHESTER, INC.

15 NORTH BROADWAY, WHITE PLAINS, N.Y. 10601
TELEPHONE (914) 940-4009 FAX (914) 940-5004

July 20, 1990

Ms. Kathie Kneff
Chief
Informal Complaints Branch
Federal Communications Commission
Washington, DC 20554

Dear Ms. Kneff:

I am President of U.S. Communications of Westchester, Inc., located at 15 North Broadway, White Plains, New York 10601.. USC provides public coin telephones and coin telephone services in the state of North Carolina, in competition with the public payphones provided by Carolina Telephone. We have been illegally assessed interstate end user common line (EUCL) charges by Carolina Telephone. I hereby request that you order Carolina Telephone to cease billing us for EUCL charges and to refund the charges that we have been improperly assessed.

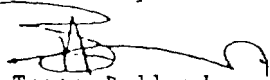
We have been subject to overcharges in the estimated total amount of \$ 4,391.40. As shown in the attached records, over the last 24 months, we have been billed by Carolina Telephone in an estimated amount \$ 4,391.40 for EUCL charges. Each of the attached bills is for service to a public pay telephone. We have complained to Carolina Telephone about these charges.

For the reasons stated in the pending petition filed by the American Public Communications Council (APCC) on April 21, 1989, EUCL charges cannot be applied to any public payphone. In 1983, the FCC concluded that EUCL charges should not apply to public payphones. MTS/WATS Market Structure, Order on Reconsideration, 97 FCC 2d 682, 703-05 (1983). This ruling must apply equally to telephone company and non-telephone company public payphones.

In addition, the assessment of charges on public pay telephones is not authorized by Carolina Telephone's tariffs. We request that the FCC order the local exchange carrier to cease the unjust and unlawfully discriminatory assessment of EUCL charges on its competitors payphones, and to refund the charges unlawfully assessed.

Thank you for your attention.

Sincerely,


Terry Dallard,
President



U.S. COMMUNICATIONS OF WESTCHESTER, INC.

15 NORTH BROADWAY, WHITE PLAINS, N.Y. 10601
TELEPHONE (014) 040-4000 FAX (014) 040-5004

August 5, 1990

Ms. Kathie Kneff
Chief
Informal Complaints Branch
Federal Communications Commission
Washington, DC 20554

Dear Ms. Kneff:

I am President of U.S. Communications of Westchester, Inc., located at 15 North Broadway, White Plains, New York 10601. USC provides public coin telephones and coin telephone services in the state of Pennsylvania, in competition with the public payphones provided by United Telephone. We have been illegally assessed interstate end user common line (EUCL) charges by United Telephone. I hereby request that you order United Telephone to cease billing us for EUCL charges and to refund the charges that we have been improperly assessed.

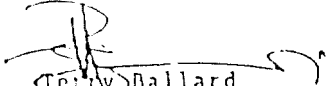
We have been subject to overcharges in the estimated total amount of \$ 294.00. As shown in the attached records, over the last 24 months, we have been billed by United Telephone in an estimated amount \$ 294.00 for EUCL charges. Each of the attached bills is for service to a public pay telephone. We have complained to United Telephone about these charges.

For the reasons stated in the pending petition filed by the American Public Communications Council (APCC) on April 21, 1989, EUCL charges cannot be applied to any public payphone. In 1983, the FCC concluded that EUCL charges should not apply to public payphones. HTS/WATS Market Structure, Order on Reconsideration, 97 FCC 2d 682, 703-05 (1983). This ruling must apply equally to telephone company and non-telephone company public payphones.

In addition, the assessment of charges on public pay telephones is not authorized by United Telephone's tariffs. We request that the FCC order the local exchange carrier to cease the unjust and unlawfully discriminatory assessment of EUCL charges on its competitors payphones, and to refund the charges unlawfully assessed.

Thank you for your attention.

Sincerely,


Jerry Ballard,
President



U.S. COMMUNICATIONS OF WESTCHESTER, INC.

15 NORTH BROADWAY, WHITE PLAINS, N.Y. 10601
TELEPHONE (914) 949-4000 FAX (914) 949-6004

July 20, 1990

Ms. Kathie Kneff
Chief
Informal Complaints Branch
Federal Communications Commission
Washington, DC 20554

Dear Ms. Kneff:

I am President of U.S. Communications of Westchester, Inc., located at 15 North Broadway, White Plains, New York 10601. USC provides public coin telephones and coin telephone services in the state of Florida, in competition with the public payphones provided by United Telephone. We have been illegally assessed interstate end user common line (EUCL) charges by United Telephone. I hereby request that you order United Telephone to cease billing us for EUCL charges and to refund the charges that we have been improperly assessed.

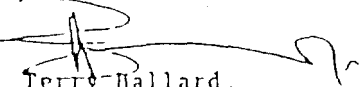
We have been subject to overcharges in the estimated total amount of \$ 5,760.00. As shown in the attached records, over the last 24 months, we have been billed by United Telephone in an estimated amount \$ 5,760.00 for EUCL charges. Each of the attached bills is for service to a public pay telephone. We have complained to United Telephone about these charges.

For the reasons stated in the pending petition filed by the American Public Communications Council (APCC) on April 21, 1989, EUCL charges cannot be applied to any public payphone. In 1983, the FCC concluded that EUCL charges should not apply to public payphones. HTS/WATS Market Structure, Order on Reconsideration, 97 FCC 2d 682, 703-05 (1983). This ruling must apply equally to telephone company and non-telephone company public payphones.

In addition, the assessment of charges on public pay telephones is not authorized by United Telephone's tariffs. We request that the FCC order the local exchange carrier to cease the unjust and unlawfully discriminatory assessment of EUCL charges on its competitors payphones, and to refund the charges unlawfully assessed.

Thank you for your attention.

Sincerely,


Terry Ballard,
President

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2001 a copy of the foregoing was served by first-class United States mail, postage prepaid, on the following parties:

The Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
445 - 12th Street, S.W.
Room 1-C861
Washington, D.C. 20554
(Hand Delivered)

Magalie Roman Salas, Secretary
Office of the Commission Secretary
Federal Communications Commission
445 - 12th Street, S.W. Room TW-B204
Washington, D.C. 20554
(Hand Delivered)

Tejal Mehta, Esquire
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Room 5-C817
Washington, D.C. 20554
(Hand Delivered)

Trent B. Harkrader, Esquire
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Room 3-A440
Washington, D.C. 20554
(Hand Delivered)

David H. Solomon, Chief
Enforcement Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554
(Hand Delivered)

Albert H. Kramer, Esquire
Katherine J. Henry
Robert S. Felger
Ted Hammerman
Charles V. Mehler III
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, N.W.
Washington, D.C. 20037

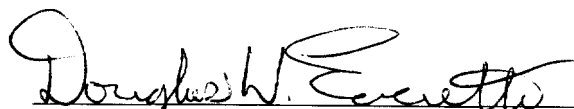
Michael Thompson, Esquire
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005

John M. Goodman, Esquire
Verizon
1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005

Sherry A. Ingram, Esquire
Verizon
1320 North Court House Road
8th Floor
Arlington, Virginia 22201

William A. Brown, Esquire
Davida M. Grant, Esquire
Southwestern Bell Telephone Company
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005

Angela M. Brown, Esquire
Theodore Kingsley, Esquire
Bell South Telecommunications Inc.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375


Douglas W. Everette